



July 12, 2002

Ms. Ruth H. Soucy
Deputy General Counsel
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2002-3787

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165525.

The Comptroller of Public Accounts (the "comptroller") received a request for information provided by the comptroller to the Senate Finance Committee, in particular a list of "companies, partnerships, and other types of business entities that are exempt from paying franchise taxes or qualify for exemptions under existing law." You indicate that you have released some responsive information to the requestor. You state that the remaining information that the comptroller provided to the Senate Finance Committee does not include a list of exempt entities. You claim that the remaining responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted by the Texas Workforce Commission (the "commission"). *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You indicate that the information responsive to this request includes a list of businesses in the state, ranked by amount of sales tax paid. You contend that this list is confidential under section 151.027(a) of the Tax Code. Section 151.027(a) provides confidentiality for information collected under the Limited Sales, Excise, and Use Tax Act and reads as follows:

- (a) Information in or derived from a record, report, or other instrument required to be furnished under this chapter is confidential and not open to public inspection, except for information set forth in a lien filed under this title or a permit issued under this chapter to a seller and except as provided by Subsection (c) of this section.

Section 152.027(a) excepts from public disclosure information and data obtained or "derived" from a taxpayer's records. In this instance, you indicate that the submitted list consists of information in or derived from a report or other instrument required to be submitted by the taxpayers pursuant to chapter 151 of the Tax Code. Consequently, we conclude that the list of taxpayers you submitted to this office for review is confidential pursuant to section 151.027(a) of the Tax Code and must therefore be withheld from the public pursuant to section 552.101 of the Government Code.

Next, you inform us that the responsive information also contains confidential wage information provided to the comptroller by the commission. You contend that this information is excepted from disclosure under section 301.081 of the Labor Code, which provides in part:

- a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.
- b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.
- c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title.

In Open Records Decision No. 599 (1992), this office interpreted the statutory predecessor of section 301.081(c) to apply to information the commission obtained from the records and reports that employers are required to file with the commission. *See* Open Records Decision No. 599 (1992) (construing former V.T.C.S. art. 5221b-9); *see also Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex.App.—Austin 1995, writ denied). The commission indicates that a portion of the responsive information was transmitted to the comptroller by the commission and consists of information derived from the commission's unemployment insurance tax records. Based on the comments submitted by the commission and our review of the submitted information, we agree that information obtained from the

records of the commission is confidential under section 301.081 of the Labor Code and must be withheld under section 552.101 of the Government Code. *See* Labor Code § 301.081; Open Records Decision No. 599 (1992).

In summary, information derived from a report or other instrument required to be submitted by the taxpayers pursuant to chapter 151 of the Tax Code is confidential and must be withheld under section 552.101 in conjunction with section 151.027 of the Tax Code. Information derived from the commission's unemployment insurance tax records must be withheld under section 552.101 in conjunction with section 301.081 of the Labor Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

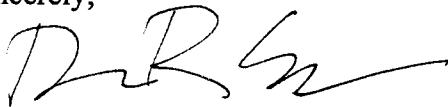
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 165525

Enc: Submitted documents

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